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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 589

WENDELL EVANS, *Petitioner,*

v.

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY, *Respondent.*

Brief In Opposition to the Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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INDEX

	Page
Jurisdiction	2
Question Presented	3
Statement of the Case	3
Argument	4
Conclusion	16
Appendix A—Affidavit of John W. Irvine	1a
Appendix B—Respondent's Answer to Further Interrogatory 1(b)	4a
Appendix C—Order on Initial Pre-Trial Conference	4a
Appendix D—Extract from Affidavit of Petitioner	7a

CASES CITED

Anderson v. *Thorington Construction Co.*, 201 Va. 266, 110 SE(2d) 396 (1959)	8
Doane v. *E. I. DuPont de Nemours & Co.*, 209 Fed. (2d) 921 (4th Cir. 1954)	6
McCann v. *Newport News Shipbuilding and Dry Dock Company*, 177 F. Supp. 909 (U.S.D.C., E.D. Va., 1959)	15
Walker v. *United States Gypsum Company*, 270 F(2d) 857 (C.A. 4th, 1959)	14, 15
Williams v. *E. T. Gresham Co.*, 201 Va. 457, 111 SE (2d) 498 (1959)	5, 7

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Respondent, Newport News Shipbuilding and Dry Dock Company, respectfully submits this Brief in Opposition to the Petition for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Fourth Circuit rendered in this case on May 11, 1966, and prays that said Petition be denied.

JURISDICTION

Respondent submits that the jurisdictional statement on page 2 of the Petition is wholly inadequate. Reference is made to 28 U.S.C. Section 1254(1) which authorizes this Court to review "any civil case". However, the statement completely fails to take into consideration the provisions of Rule 19 of the Revised Rules of this Court which sets forth the general nature of the reasons which this Court will consider as special and important reasons. Nowhere in the Petition is it even remotely suggested that the Court of Appeals for the Fourth Circuit has rendered a decision in conflict with the decision of another Court of Appeals on the same matter, or that it has decided an important state question in a way in conflict with applicable state law. Furthermore, there is absolutely no question of Federal Law or any Federal question in any way involved in this case, and there is absolutely nothing in the Petition or the record to indicate that the Court of Appeals for the Fourth Circuit so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court as to call for the exercise of this Court's power of supervision. The very best that can be gleaned from the record and the Petition is that Petitioner's case was decided adversely to him by both the United States District Court for the Eastern District of Virginia and the United States Court of Appeals for the Fourth Circuit after a full and complete hearing in both Courts in strict accordance with the Rules. Both Courts applied a rule of law which is well established in Virginia by statute and by various decisions of both the Supreme Court of Appeals of Virginia and the United States Court of Appeals for the Fourth Circuit applying Virginia law. Respondent submits that the

mere fact that the Petitioner's case was decided adversely to him is not sufficient reason to invoke the jurisdiction of this Court on Writ of Certiorari.

QUESTION PRESENTED

The manner in which Petitioner has stated what he contends to be the question involved in this case serves to point up the position of the Respondent that there is no question involved in this case which would justify review by this Court. Petitioner, in extremely self-serving language, has not actually set forth any Federal question or Constitutional issue which should be decided by this Court, but has merely made four argumentative statements which are wholly unsupported by the record and amount to no more than reasserting the same contentions which were presented to, and rejected by, both the District Court and the Court of Appeals for the Fourth Circuit.

STATEMENT OF THE CASE

Petitioner's statement of the case is substantially correct with the exception of certain statements contained on page 5 of the Petition. These statements clearly reflect that the Petition was written by an attorney who did not participate in the proceedings in either the District Court or the Court of Appeals for the Fourth Circuit, and who, apparently, has made only a rather cursory examination of the record. For example, it is stated on page 5 that Respondent's Answers to Interrogatories disclose that "most" of the cranes erected in Respondent's Shipyard during the period 1948-1962 were erected in conjunction with McLean. The fact of the matter is that the original Affidavit filed by Respondent in support of the Motion for Summary Judgment (Appendix A) discloses that

during this period thirteen cranes had been erected by Respondent using its own personnel and equipment solely. Respondent's answer to Further Interrogatory 1(b) (Appendix B) shows that Respondent erected only twelve cranes in conjunction with McLean during this period. Of course, the type and weight of the cranes involved has nothing whatever to do with the issues raised on Summary Judgment, but Respondent points this out as an example of the inaccurate and self-serving statements which appear throughout the Petition.

ARGUMENT

Before discussing briefly the matters set forth in headings *a* through *d* on pages 7 through 15 of the Petition, Respondent would emphasize to this Court that there has never been but one material issue of fact in this case, i.e., whether or not the work in which Petitioner was engaged at the time of his injury was a part of the normal trade, business and occupation of Respondent. Comprehensive and detailed affidavits were filed in the District Court showing conclusively that the work was a part of the Respondent's trade, business and occupation and not one word is contained in the only counter-affidavit filed by the Petitioner in the District Court to suggest that it was not. No affidavit was ever filed by Petitioner in the District Court that contrary essential facts were unavailable, and no motion for a continuance of the regularly scheduled hearing on the Motion for Summary Judgment was ever made. This one key fact stood uncontradicted and undisputed on the day the Motion for Summary Judgment was heard, as indeed it does today.

In Virginia, it has been the well-established law both by statute and judicial interpretation that if a work-

man is injured while engaged in work which is part of the trade, business and occupation of the person for whom the work is being done, his remedy is limited to Workmen's Compensation benefits and no common law action for damages can be maintained against the person for whom the work was being done.

In the case of *Williams* v. *E. T. Gresham Co.*, 201 Va. 457, 111 SE (2d) 498 (1959), the plaintiff was an employee of Chesapeake Bay Ferry District, which had contracted with the defendant, E. T. Gresham Co., to make certain repairs to its dock facilities. The plaintiff was assigned by his employer to work with the defendant's employees on the job, and while so engaged was injured by a falling block. The Plaintiff applied for and received workmen's compensation benefits from the Ferry District, his employer. The Virginia Supreme Court of Appeals held that the plaintiff's exclusive remedy was under the Workmen's Compensation Act, and that the common law action could not be maintained. In reaching this conclusion the Court said the following:

> "There is no material conflict in the evidence and it conclusively shows that defendant was engaged in work, at the time of plaintiff's injury, which was a part of the trade, business or occupation of the owner, Ferry District, and that defendant was not a stranger to the work. Both defendant and Ferry District were under the canopy of the Workmen's Compensation Act and not subject to an action at law by plaintiff, Ferry District's employee, for damages on account of injuries he received while engaged in the same work. Section 65-37, supra. Therefore, defendant was not an other party" within the purview of Section 65-38, supra, and amenable to such an action at law."

The same interpretation of Virginia law is followed by the Court of Appeals for the Fourth Circuit and a clear example is found in the case of *Doane* v. *E. I. DuPont de Nemours & Co.*, 209 Fed. (2d) 921 (4th Cir. 1954). The case involved a suit by an employee of Texas Company, alleging negligence on the part of an independent contractor employed by Texas Company. At the time the injury was sustained the plaintiff was engaged in certain work in connection with the cleaning of a tank. This Court, speaking through Judge Soper, held that the action could not be maintained under the Virginia law. The Court reviewed the pertinent Virginia decisions and then said the following:

> ". . . As we read these decisions the decisive question is whether the claimant was injured while engaged in an operation which entered directly into and became a part of the business of the person for whom the work was being done. If a workman is so engaged, he is covered by the compensation which the owner of the business is obliged to furnish, and *he has no right of action against anyone else engaged in the same operation.*" (emphasis supplied).

Respondent therefore submits that Petitioner was clearly a "statutory employee" of Respondent at the time of his injury and under Virginia law there is not the slightest, remotest question that an action for damages cannot be maintained against Respondent.

Respondent will now undertake to discuss the various points raised on pages 7 through 15 of the Petition and will use the same headings used in the Petition.

a. Summary Judgment Was Inappropriate on the Question of Whether Respondent Was a Statutory Employer of Petitioner.

Petitioner first suggests that answers made by Respondent to certain Interrogatories created material issues of fact. However, the Petition completely fails to explain how the type and weight of the crane in question could possibly be material in view of the undisputed fact that erection of cranes of all types was a part of the Respondent's normal trade, business and occupation. The total irrelevance of this issue is made clear by the fact that in Virginia it makes no difference whether the owner had ever actually done the work in question, if in fact the work is part of the owner's normal trade, business and occupation. This was the holding of the Supreme Court of Appeals of Virginia in *Williams* v. *E. T. Gresham Co.*, 201 Va. 457, 111 SE (2d) 498 (1959), where an employee of Chesapeake Bay Ferry District attempted to maintain a negligence action against E. T. Gresham Co., which company had been employed by Ferry District to perform certain pile driving work. The Virginia Supreme Court of Appeals held that the action was barred because the work was part of the trade, business and occupation of Ferry District and Plaintiff, a carpenter, was also engaged in the work at the time his injury was sustained. This conclusion was reached by the Court despite the fact that Ferry District had *never* owned a crane and alone had *never* attempted to drive piles. Equipment had always been secured elsewhere for pile driving, and the actual operation of the crane involved was completely under the control of the Defendant. Furthermore, the Defendant selected the equipment and hired and trained the personnel to operate it. The Plaintiff and other maintenance employees of Ferry District and

Defendant's employees worked together on the job. Despite these facts, the Court had little difficulty concluding that the action was barred. In the case of *Anderson* v. *Thorington Construction Co.*, 201 Va. 266, 110 SE (2d) 396 (1959), the Plaintiff as supervising certain construction work on a turnpike when he was injured and brought a negligence action against the Turnpike Authority. Again, the Court held that the action was barred because the work was part of the trade, business and occupation of the Turnpike Authority, and this result was reached by the Court despite the fact that the Turnpike Authority maintained *no force of employees* to do the type work in which the Plaintiff was engaged at the time of his injury, and *always* awarded contracts for this type work to independent contractors.

The Petitioner next suggests to this Court that the granting of Summary Judgment by the District Court was "premature" by which he apparently means to imply that he was not given an adequate opportunity to prepare for the hearing on the Motion for Summary Judgment. Respondent submits that the record in this case clearly shows that Petitioner had more than an adequate opportunity to complete any preparation or discovery as to facts which were material to the issue involved.

First of all, Respondent would respectfully call the Court's attention to the time lapse between the various phases of the proceedings in the District Court. Respondent filed its Answer in this case on August 5, 1964, and the tenth defense in that Answer fully and completely stated the same defense which was later embodied in the Motion for Summary Judgment. Under these circumstances, it certainly cannot be contended

by the Petitioner that he was taken by surprise by the Motion for Summary Judgment. The Motion for Summary Judgment was then filed accompanied by detailed affidavits and a lengthy Brief in support thereof on December 10, 1964, slightly over four months after the filing of the Answer. During this four month period, absolutely no effect of any nature whatsoever was made by the Petitioner to institute any discovery procedures. The Petitioner propounded Interrogatories on December 18, 1964, and further Interrogatories on January 19, 1965, and both sets of these Interrogatories were fully answered by the Respondent on February 15, 1965.

Perhaps one of the most significant dates is January 22, 1965, at which time an Initial Pre-Trial Conference was held. An Order was entered on the same day, which is printed as Appendix C, providing that a hearing would be held on the Motion for Summary Judgment on April 9, 1965; setting dates for filing Briefs by the parties; and providing that it was understood by all counsel that no testimony would be presented at the hearing.

The Petitioner's Brief in opposition to the Motion was filed on March 10, 1965, which Brief argued that the Motion was premature, but did not seek a continuance of the hearing on the Motion.

The record therefore shows conclusively that Petitioner had over eight months from the date Respondent's answer was filed until the hearing was held on the Motion for Summary Judgment to fully prepare himself for the hearing and to utilize any of the multitude of discovery procedures available under the Federal Rules.

Petitioner further contends that he was prevented from taking the deposition of W. F. Metts who signed Respondent's Answers to Interrogatories. An examination of the record will again show that the Notice to take the deposition of Mr. Metts was filed on April 9, 1965 (not April 6, 1965 as stated on page 8 of the Petition) which was the very day that the hearing on the Motion for Summary Judgment was scheduled, which hearing date had been *agreed upon by all counsel* at the Initial Pre-Trial conference held on January 22, 1965. Furthermore, the Notice stated that the deposition would be taken on April 28, 1965 which was in fact nineteen days after the hearing on the Motion for Summary Judgment was held. Respondent cannot believe that such an assertion would be made by counsel for Petitioner if he had personally participated in the proceedings in the District Court. The fact of the matter is that at the hearing held on April 9, 1965, counsel then representing Petitioner stated to the District Judge and to this counsel that the depositions of Mr. Metts and the other parties named in the Notice were designed solely to uncover possible acts of negligence on the part of the Respondent, and that evidence of negligence would be totally irrelevant if the Motion for Summary Judgment was sustained. If, in fact, Petitioner had wanted to take the deposition of Mr. Metts in connection with the issues involved on Summary Judgment, certainly this should have been done prior to the hearing on the Motion for Summary Judgment. Furthermore, the July 5th, 1965 cut off date in the Initial Pre-Trial Order (Appendix C) was certainly not the date for discovery as to facts pertinent to the issues on Summary Judgment when the very same Order scheduled the hearing on the Motion for Summary Judgment for April 9, 1965. The very pur-

pose of setting a hearing on the Motion for Summary Judgment on April 9th was to dispose of the issues raised by the Motion at an early date, and for counsel for Petitioner to assert to this Court that Petitioner had, under the terms of the Order, until July 5, 1965 to discover evidence pertaining to the Motion to be heard on April 9, 1965 is nothing short of incredible.

b. Summary Judgment Is Inappropriate Where There Is Genuine Issue Between the Parties as to Material Facts, Especially Where the Resolution of the Dispute Is Important to the Development of a Theory of Liability of the Non-Moving Party.

In this section of the Petition an extraordinary theory of "estoppel" is again asserted by Petitioner despite the fact that it was presented to the District Court and the Court of Appeals for the Fourth Circuit and rejected by both of these tribunals. Petitioner says that the Affidavit of the Petitioner himself filed in opposition to the Motion for Summary Judgment shows that Respondent "rejected" its employment relationship with Petitioner and should therefore, be estopped from relying on the Virginia Workmen's Compensation Act. It is interesting to note that absolutely no authority whatsoever is cited in support of this incredible contention. Furthermore, the pertinent portion of Petitioner's Affidavit is reproduced as Appendix D and an examination of this Affidavit will show that the so called "rejection" of employment relationship consisted of sending the seriously injured Petitioner from Respondent's First Aid Station to the hospital. Respondent respectfully submits that this contention is so absurd on its face as to not merit further comment in a brief in this Court.

This section also again goes into the claim that Petitioner was "mishandled" by Respondent's First

Aid personnel. The answer to this can be found in that portion of the District Court's opinion reproduced on pages A-2 and A-3 of the Petition. The opinion and the authorities cited therein clearly show that even if Petitioner was "mishandled" a separate action for damages cannot be maintained under Virginia law. In view of this portion of the District Court's opinion it is rather difficult to understand the statement on page 10 of the Petition that neither Court "came to grips" with the question of whether the Petitioner was "mishandled". The District Court in fact devoted a substantial portion of its opinion to this question and the fact that it was not discussed in the opinion of the Court of Appeals for the Fourth Circuit obviously means that that Court felt the District Court was so clearly right that further comment was not required.

c. Summary Judgment Is Inappropriate Since There Are Genuine Issues on Material Facts With Respect to Whether Respondent Failed to Have Safety Regulations in Force, or Whether It Failed to Enforce Those Safety Regulations It Had in Force, or Whether Respondent Failed to Provide Petitioner With a Safe Place to Work.

In this section Petitioner says that Summary Judgment should not have been granted since there were conflicts in the record as to whether or not Respondent maintained or enforced certain safety measures. This theory was presented to both the District Court and the Court of Appeals for the Fourth Circuit and rejected by both. The Order of the District Court reproduced on pages B-1 and B-2 of the Petition states clearly that any violation of safety rules or statutes would only amount to negligence, and as stated on page 12 of the Petition, this would all be irrelevant "because it only tends to demonstrate negligence on the part of the Respondent and any claim of negligence is barred

by the exclusive remedy provision of the Workmen's Compensation Act".

This section also contains the ridiculous statement that Respondent acted capriciously toward Petitioner and demonstrated a complete disregard for his safety. The only thing in the record on which to base this statement is the portion of Petitioner's affidavit reproduced as Appendix D. An examination of this affidavit will show that what Petitioner is talking about is that Respondent sent the Petitioner to the hospital and this is supposed to be capricious conduct showing a complete disregard for his safety.

This section also mentions Petitioner's claim that he is entitled to maintain a separate action for punitive damages which claim is again answered completely by the portion of the opinion of the District Court reproduced on pages A-2 through A-5 of the Petition. Respondent does not agree with the accusation on page 13 of the Petition that the Court of Appeals for the Fourth Circuit "failed" to pass upon this issue. The fact of the matter is that again the Court of Appeals felt that the opinion of the District Court was so clearly correct that no further elaboration was required.

d. Applicable Legal Principles and Conclusion.

Respondent agrees with the general statements made in this section pertaining to Summary Judgment, but submits that these statements have no bearing on this case because there has never been any conflict as to a material issue. It is for this type situation that the Summary Judgment procedure was designed. The whole purpose of the Summary Judgment procedure would be defeated if a case of this nature, which should never have been brought in the first place, and which

was in fact filed the day before the Statute of Limitations would have run, could be forced to trial by merely contending that some issue exists.

Both the appropriateness of Summary Judgment in this type of case and the complete answer to Petitioner's contention that he is entitled to a jury trial can be found in the following language of Chief Judge Haynesworth in the case of *Walker* v. *United States Gypsum Company,* 270 F. (2d) 857 (C.A. 4th, 1959):

> "Under these circumstances, we need not, indeed we may not, speculate about Virginia's resolution of this precise question. Under Byrd and Magenau, we must treat the plea as an affirmative defense and hold that any issue of fact involved should have been submitted to a jury, as demanded by the plaintiff."
>
> "It certainly does not follow, however, that, if there is no issue of fact genuinely in dispute, the question of employment status must be submitted to a jury. Whether the Industrial Commission or the common law court is the exclusive and appropriate forum for the adjudication of the rights of the injured claimant is a preliminary question, related only collaterally to the substantive cause of action. This sort of question is peculiarly appropriate for summary judgment when there is no genuinely disputed issue of fact. The parties should not be put to a long and expensive trial only to have the Court discover at the end that the case should have been brought in another tribunal. Nor should the parties and the public suffer the delay and dislocation which necessarily follow if crowded jury trial dockets are burdened with cases in which there is no triable issue. Rule 56 Fed. Rules Civ. Proc. 28 U.S.C.A., is designed to insure that they need not."

In the case at bar the Court of Appeals for the Fourth Circuit, precisely as it did in the *Walker* case, concluded that there was no genuine issue of fact and held that the District Court properly entered Summary Judgment. Any possible conflict between the *Walker* case and the *Byrd* and *Mageneau* cases cited on page 15 of the Petition was resolved when certiorari was denied in the *Walker* case by this Court on May 31st, 1960 (363 U.S. 805). This same problem was reviewed subsequent to the *Walker* case by the United States District Court for the Eastern District of Virginia in *McCann* v. *Newport News Shipbuilding and Drydock Company,* 177 F. Supp. 909 (U.S.D.C., E.D. Va., 1959), wherein Chief Judge Hoffman stated:

> "Plaintiff insists that a jury question has been presented under the authority of *Byrd* v. *Blue Ridge Electric Cooperative,* 356 U.S. 525, 78 S. Ct. 893, 2 L. Ed. (2d) 053, and *Mageneau* v. *Aetna Freight Lines, Inc.,* 360 U.S. 273, 79 S. Ct. 1184, 3 L. Ed. (2d) 1224. Recognizing the binding effect of these judicial pronouncements, it does not follow that the employment status of an individual must be submitted to a jury where the facts are not in dispute. In the instant proceeding the respective motions for summary judgment are supported by comprehensive affidavits which are not controverted by plaintiff. In the recent case of *Walker* v. *United States Gypsum Company,* 4 Cir., F. (2d) (decided October 5, 1959), Judge Haynesworth discussed the problem at length in a case involving the employment status of an individual found to be a statutory employee under the Virginia Act. Relying upon *Walker* we find nothing herein to justify jury action upon the admitted facts."

CONCLUSION

Respondent respectfully submits that there is absolutely nothing in the record or the Petition to show that there is any special or important reason for this Court to review this case on a Writ of Certiorari. Respondent vigorously disagrees with the accusations scattered throughout the Petition that Chief Judge Hoffman of the Eastern District of Virginia and Circuit Judges Bell and Bryan and Circuit Judge-Designate Field failed to examine the facts in the case and failed to discharge their obligation to give Petitioner's case a fair and impartial hearing. On the contrary, it is the position of Respondent that the record in this case shows beyond any question that Petitioner has been given a full and fair hearing and opportunity to present his case in accord with the Federal Rules in both the District Court and the Court of Appeals for the Fourth Circuit. The fact that both of these Courts rejected the various claims of the Petitioner as being clearly without merit is wholly insufficient to merit review by this Court.

Respondent respectfully prays that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

PHILLIPS M. DOWDING
215-29th Street
Newport News, Virginia
Counsel for Respondent, Newport News Shipbuilding and Dry Dock Company.

AFFIDAVIT NO. 1

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

Civil Action No. 1017

WENDELL EVANS, *Plaintiff*,

v.

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY, a Virginia corporation, *Defendant*.

Affidavit

STATE OF VIRGINIA

City of Newport News, to-wit:

This day personally appeared before me, the undersigned Notary Public in and for the City and State aforesaid, JOHN W. IRVINE, who made oath and said as follows:

I am John W. Irvine, and I reside at 7 Douglas Drive, Newport News, Virginia. Since 1933 I have been employed by the Newport News Shipbuilding and Dry Dock Company, Newport News, Virginia (hereinafter referred to as Shipyard), which company has for many years been engaged in the building and repairing of naval and merchant vessels and the manufacturing of hydraulic turbines and accessories and other heavy machinery at its plant in the City of Newport News, Virginia. Since 1954 I have held the position of Plant Engineer of the Shipyard, and as such I have overall responsibility for, and supervision of, the purchase, installation and maintenance of all plant equipment.

In May of 1962 the Shipyard purchased two (2) used American Hoist and Derrick Model R-15 Whirler Cranes from McKees Rocks Industrial Enterprises, Pittsburgh, Pennsylvania. These cranes were shipped by rail to the Shipyard in a knocked down or disassembled condition.

Thereafter, the Shipyard contracted with McLean Contracting Company (hereinafter referred to as McLean) to furnish certain labor and equipment in connection with the erection of these cranes. The work to be done by McLean consisted primarily of welding and structural steel erection. The shipyard, using its own employees and equipment, installed the crane tracks (rails, ties and ballast), the diesel-driven generators and fuel tanks for the cranes, and performed all electrical and piping work, all painting, and certain work involving the cab and the fittings.

The Plaintiff, Wendell Evans, an employee of McLean Contracting Company, was injured on July 16, 1962, while performing certain structural steel erection work in connection with the erection of one of the aforesaid cranes located on the north side of the Shipyard, west of the former Barge Basin near No. 16 lateral railroad tracks.

Many various types of cranes are owned and used almost constantly by the Shipyard in connection with carrying out its business of building and repairing naval and merchant vessels and manufacturing hydraulic turbines and accessories and other heavy machinery. The erection of cranes of all types is an integral part of the normal trade, business and occupation of the Shipyard, and the Shipyard is perfectly capable of erecting any type of crane, using its own personnel and equipment exclusively. For example, the following is a list of cranes which have been erected in recent years by the Shipyard, using solely its own personnel and equipment:

Crane	Location	Date of Erection
Eight (8) 15 ton Bridge Cranes	Shipway No. 8 and 9	January 1964
One (1) 15 ton Gantry Crane	Scrap Yard	February 1963
One (1) 100 ton Bridge Crane	Erecting Shop	March 1958
One (1) 50 ton Bridge Crane	Foundry	February 1958
One (1) 15 ton Gantry Crane	Barge Basin	February 1955
One (1) 40 ton Bridge Crane	Foundry	March 1949

The primary reason for contracting with McLean to perform a portion of the work in connection with the erection of the aforesaid two cranes was two-fold. First of all, the shipyard's own caterpillar or crawler-type cranes which are used to hoist the steel plates into position were being used in connection with other work being performed in another part of the Shipyard. Secondly, at the particluar time that these cranes were erected most of the shipyard welders were engaged in other pressing work. It was for these reasons that the Shipyard concluded it would be advantageous to have McLean perform a portion of the aforesaid erection work.

I know from my own personal knowledge that on July 16, 1962, for many years prior to that date, and at all times subsequent to that date the Shipyard was subject to the provisions of the Virginia Workmen's Compensation Act, and was certified by the Industrial Commission of Virginia as a self-insurer, in accord with Section 65-100 of said Act.

JOHN W. IRVINE
John W. Irvine

SUBSCRIBED AND SWORN to before me this 2nd day of November, 1964. My commission expires on the 10th day of February, 1968.

VIRGINIA BURDIGE ADAMS
Notary Public

APPENDIX B

Respondent's answer to Petitioner's Further Interrogatory 1(b):

Type of Crane	*Date of Erection*	*Location*
Four (4) 56 ton American cranes	1948-1949	Area of Shipways No. 5, 6 and 7
Two (2) 22½ ton American cranes	1948-1949	Area of Shipways No. 5, 6 and 7
One (1) 25 ton Dravo crane	1949	Area of Shipways No. 5, 6 and 7
One (1) 60 ton Clyde Whirler crane	1962	Area of Shipway No. 7
Two (2) 15 ton American cranes	1962	North Side
One (1) 100 ton Bridge crane	1964	Shipway No. 9
One (1) 100 ton Bridge crane	1964	Shipway No. 8

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

Civil Action No. 1017

WENDELL EVANS, *Plaintiff(s)*

v.

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY, *Defendant(s)*

(Third-Party Plaintiff(s))

v.

Third-Party Defendant(s)

Order on Initial Pre-Trial Conference

Subject to any special appearance, questions of jurisdiction, or other motions now pending, all as heretofore filed, the parties having advised the Court that certain processes of discovery are contemplated and not completed, it is

ORDERED that the parties do propound interrogatories, file motions for the production of documents and/or requests for admission of facts and genuineness of documents and/or take discovery depositions of witnesses and/or parties according to the following schedule:

By the plaintiff(s)—To commence forthwith the processes of discovery in order to have completed the same on or before July 5, 1965.

By the defendant(s) and/or third-party plaintiff(s)—To commence forthwith the processes of discovery in order to have completed the same on or before August 4, 1965.

By the third-party defendant(s)—To commence forthwith the processes of discovery in order to have completed the same on or before ——.

If a party does not complete the processes of discovery on or before the aforesaid date such party shall be precluded from thereafter attempting to discover, unless by leave of Order first granted and by showing good cause why the processes of discovery were not completed or to the time limit specified herein; but nothing contained herein shall be construed as preventing the further use of discovery by a party if an opposing party brings out matter at the time of discovery which may, in the discretion of the Court, justify additional discovery proceedings.

The time required to transcribe discovery depositions shall not be considered in determining the completion dates of discovery.

The Court reserves the right to permit discovery depositions of a party or witness who is a non-resident or otherwise unavailable, at any time prior to trial, but such permission must be granted by the Court in the absence of agreement of counsel.

This case is set for trial on October 13, 1965 at Newport News. The matter is set for a further pre-trial conference on September 10, 1965, at 2 P.M. at Newport News. At least 15 days in advance of the further pre-trial conference or, in the event no further pre-trial conference is scheduled, at least 15 days in advance of trial, counsel shall meet and confer as to matters provided for under Local Rules. Such meeting of counsel will be in the offices of counsel for defendants on August 25, 1965, at 2 P.M.

All de bene esse depositions shall be concluded on or before August 18, 1965.

Trial by jury has been demanded at the initial pretrial conference.

A hearing on the motion for summary judgment will be conducted at Norfolk on April 9, 1965, at 9 a.m. The defendant's brief in support of its motion for summary judgment was filed on December 10, 1964. Plaintiff agrees to file a brief in opposition to said motion on or before March 9, 1965; and counsel for defendant is granted until April 1, 1965, within which to file a reply to defendant's brief. It is understood that no testimony will be presented at the time of the hearing on the motion for summary judgment, but that counsel do desire oral argument, which will be heard at that time.

Date: January 22, 1965

/s/ WALTER E. HOFFMAN,
United States District Judge

APPENDIX D

Extract from Affidavit filed by Petitioner in District Court:

"The ambulance was from the Newport News Shipbuilding Company there. They had their First Aid men and driver who came down. They wanted to pick me up to put me on the stretcher and hadn't examined any of my injuries. They didn't know what was wrong and I was trying to tell them that there was something wrong with my back. They picked me up by the shoulders finally and put me on the stretcher. They picked me up the wrong way and aggravated my injuries. They loaded me onto the ambulance and took me to the First Aid Station in the shipyard in the shipyard's ambulance. So I was in the meantime lifted bodily around the shoulders and legs off of the stretcher that came from the ambulance onto the wagon to this high table. This aggravated my injuries. I went in and they started to clean up some of the injuries on my face and my knee and asked me what had happened, who to call in an emergency and I gave them all the information that they had asked for. They found that I was an employee of the McLean Contracting Company so they said they couldn't take care of me there but they would send me to the Riverside Hospital. I was lifted off the stretcher onto the hospital table by the Newport News dispensary personnel. After they discovered that I was an employee of the McLean Contracting Company and was told to send me to Riverside they took me off the table back onto the stretcher. This aggravated my injury. I don't know exactly how much time passed then but I judge around 45 minutes elapsed. Then they sent me on up in the shipyard ambulance to Riverside Hospital where they took me to the emergency room."